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13 CANTER & ASSOCIATES, LLC and
14 LAUREATE EDUCATION, INC.

15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17 SAN JOSE DIVISION

18 CANTER & ASSOCIATES, LLC and
19 LAUREATE EDUCATION, INC.,
20 Plaintiffs,
21 v.
22 TEACHSCAPE, INC.,
23 Defendant.

Case No. C 07-3225 RS

**DECLARATION OF ELENA M.
DIMUZIO IN SUPPORT OF
PLAINTIFFS' REPLIES
SUPPORTING MOTIONS FOR
ENTRY OF PROTECTIVE ORDER
AND TO COMPEL INITIAL
DISCLOSURES**

Judge: The Honorable Richard Seeborg
Ctm.: 4 (5th floor)
Date: January 9, 2008
Time: 9:30 a.m.

1 I, Elena M. DiMuzio, declare:

2 1. I am an associate with the law firm of Heller Ehrman LLP (“Heller Ehrman”),
3 counsel to Plaintiffs Laureate Education, Inc. (“Laureate”) and Canter and Associates, LLC
4 (“Canter”) (collectively, “Plaintiffs”) in this action. I make this declaration in support of
5 Plaintiffs’ Motion For Entry Of Protective Order and To Compel Initial Disclosures. Unless
6 otherwise noted, the factual assertions herein are made on my personal knowledge and, if
7 called upon to do so, I could and would testify competently thereto.

8 2. On September 26, 2007, after the hearing on the Motion to Dismiss, counsel
9 for Plaintiffs and Defendant Teachscape, Inc. (“Teachscape”) met and conferred regarding
10 case management in the courthouse hallway. Counsel for Teachscape repeated its
11 ambiguous offer to perform an “apples to apples” comparison of the parties’ course
12 materials; both counsel then reiterated their positions regarding Plaintiffs’ access to
13 Teachscape’s final and draft course materials, which positions had been discussed via
14 telephone and electronic mail already, and had resulted in a breakdown of pre-lawsuit
15 settlement discussions. No agreement was reached. Counsel for Plaintiffs, Dan Kassabian,
16 asked if Teachscape would serve Initial Disclosures that day. Counsel for Teachscape,
17 Gayle Athanacio, stated that it would not, and that she had not begun drafting such
18 disclosures. In light of its refusal to perform even this simple obligation, counsel for
19 Plaintiffs, Annette Hurst, noted that if Plaintiffs sued Teachscape on their state law claims
20 in state court, they would very likely be entitled to discovery regarding all of the materials
21 Plaintiffs sought in the pre-litigation discussions.

22 3. In noticing Plaintiffs’ Motion for Entry of Protective Order and Motion to
23 Compel Initial Disclosures, Plaintiffs set the hearing dates of December 26 and January 2
24 pursuant to Local Rule 7-2, which keys hearing dates from the date that motions are filed.
25 Contrary to Teachscape’s accusations, these dates were not selected to harass or
26 inconvenience Teachscape, but were simply the result of the filing dates of Plaintiffs’
27 motions. As evidenced in my previous declaration in support of the Motion to Compel,
28 counsel for Teachscape was explicitly warned, on November 9, 2007, that Plaintiffs planned

1 to file both motions if the parties could not resolve these issues. Teachscape did not
2 respond to Plaintiffs' meet-and-confer attempt to avoid these motions, and did not state that
3 it was unavailable for hearing dates which would naturally result from filings in the weeks
4 following November 9. Nevertheless, when Counsel for Teachscape did contact Plaintiffs
5 to state that no one from her office was available to appear for these hearing dates, on
6 November 29 and 30 (a full two weeks after the Motion to Compel was filed, and shortly
7 before the due date for Teachscape's Opposition), counsel for Plaintiffs agreed to move the
8 hearing date to a day Teachscape's counsel was available. Counsel for Plaintiffs further
9 agreed to stipulate to a change in the briefing schedule to accommodate counsel for
10 Defendants, though would not agree to move the date for Plaintiffs' replies to December 24,
11 as proposed by Ms. Athanacio.

12 4. On December 19, 2007 I was present during a telephone call during which
13 Dan Kassabian offered to draft a meet-and-confer letter regarding Teachscape's objections
14 to Plaintiffs' First Set Of Requests for Production of Documents and Things. In addition,
15 on December 7, 2007, I sent an e-mail to Ms. Athanacio indicating that Plaintiffs are willing
16 to meet and confer regarding the scope and timing of the noticed 30(b)(6) deposition, and
17 indicating that Plaintiffs would re-notice the deposition.

18
19 I declare under penalty of perjury pursuant to the laws of the United States that the
20 foregoing is true and correct of my own knowledge and that this Declaration is executed on
21 November 28, 2007 in San Francisco, California.

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23 By /s/ ELENA M. DIMUZIO
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